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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

HAROLD JONES, et al.,

Plaintiffs,

vs.

CERTIFIEDSAFETY, INC.

Defendants.

Lead Case No. 3:17-cv-02229-EMC

Consolidated with 3:17-cv-03892-EMC (*Crummie*)

Related to: 3:18-cv-04379-EMC (*Ross*)

3:19-cv-01338-EMC (*Jones II*)

3:19-cv-01380-EMC (*Jones III*)

3:19-cv-01381-EMC (*Jones IV*)

3:19-cv-01427-EMC (*East*)

3:19-cv-01428-EMC (*Jones V*)

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR ATTORNEYS' FEES AND
COSTS AND FOR SERVICE AWARDS**

Date: May 28, 2020

Time: 1:30 p.m.

Courtroom: 5 (17th Floor)

Judge: Honorable Edward M. Chen

Jones Complaint filed: April 21, 2017

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1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on May 28, 2020, at 1:30 p.m. in Courtroom 5 before
 3 Hon. Edward M. Chen of the United States District Court, Northern District of California, Plaintiffs
 4 Harold Jones, Tierre Crummie, Genea Knight, Sandra Turner, George Azevedo, Jr., Marcellous
 5 Ross, and Michael East (“Plaintiffs”) move the Court for an Order awarding Class Counsel
 6 reasonable attorneys’ fees of \$2,000,000 plus reimbursement of actual out-of-pocket costs of
 7 \$60,397.73.

8 Plaintiffs also move for an Order granting service awards in the aggregate amount of
 9 \$75,000 for the seven Class Representatives – \$15,000 for Plaintiffs Jones, Knight, and Crummie;
 10 \$10,000 for Plaintiffs Ross and East; and \$5,000 for Plaintiffs Azevedo and Turner – to be paid out
 11 of the Gross Settlement Amount in recognition of their considerable service to the Classes and
 12 Collective.

13 Plaintiffs bring this Motion pursuant to Federal Rule of Civil Procedure 23(h) and 29 U.S.C.
 14 § 216(b) of the Fair Labor Standards Act. This motion is based on the accompanying Memorandum
 15 of Points and Authorities; the Declaration of Carolyn Hunt Cottrell and the exhibits attached
 16 thereto; the Declaration of Edwin Aiwanian; the Declarations of Harold Jones, Tierre Crummie,
 17 Genea Knight, Sandra Turner, George Azevedo, Jr., Marcellous Ross, and Michael East; such oral
 18 argument as may be heard by the Court; and all other papers on file in this action.

19
 20 Date: April 23, 2020

Respectfully submitted,

21
 22 /s/ Carolyn Hunt Cottrell

23 Carolyn Hunt Cottrell

24 David C. Leimbach

Michelle S. Lim

25 Scott L. Gordon

SCHNEIDER WALLACE

26 COTTRELL KONECKY LLP

27 Attorneys for Plaintiffs and the Settlement Classes and
 28 Collective

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I. INTRODUCTION

Class Counsel Schneider Wallace Cottrell Konecky LLP (“SWCK”) and Lawyers for Justice, PC (“LFJPC”) respectfully submit this application for an award of attorneys’ fees and costs to compensate them for their extensive work over the past three years in achieving a \$6,000,000 class and collective action settlement on behalf of current and former Safety Attendants and Safety Foremen for Defendant CertifiedSafety, Inc. (“Defendant” or “CertifiedSafety”). The \$2,000,000 fee that Class Counsel request – one-third of the \$6,000,000 Gross Settlement Amount – represents less than Class Counsel’s current aggregate lodestar.¹ Plaintiffs also seek reimbursement of \$60,397.73 in costs, all of which were reasonable and necessary to reach this result for the Classes and Collective. Class Counsel additionally seek approval of Class Representative Service Payments for the Named Plaintiffs who represent the Rule 23 Class Members and Opt In Plaintiffs in the Actions.

On January 22, 2020, the Court granted preliminary approval of the Settlement² of this wage and hour, hybrid state law class and collective action under Rule 23 of the Federal Rules of Civil Procedure and the Fair Labor Standards Act (“FLSA”). *See* ECF 216. The Settlement provides excellent monetary payments for the Class Members in the Actions.³ In particular, the average Individual Settlement Payment for each of the 2,481 Class Members is approximately \$1,514.35 per Class Member—an exceptional amount considering that the typical Class Member worked a relatively short tenure.⁴ Sixty-eight Class Members will receive in excess of \$10,000.00, six Class Members will receive over \$20,000, and the largest recovery is an impressive \$26,205.20. Class Members are paid \$40.97 for each FLSA-Only Workweek under the Settlement. When Workweek weightings are applied, Class Members are paid, *inter alia*, twice that (\$81.94) for each Washington

¹ The Settlement Agreement sets aside 35% of the Gross Settlement Amount, or \$2,100,000, for attorneys’ fees. The estimated Individual Settlement Payments provided in the Notices of Settlement are based on a 35% award. With a one-third award, the Net Settlement Amount will increase and the differential will be distributed to the Class Members.

² The “Settlement” or Settlement Agreement” refers to the Stipulation of Class, Collective, and Representative Action Settlement, as amended, filed at ECF 206-2 (Amendment filed at ECF 215-2).

³ Plaintiffs and members of the Classes and Collective are referred to hereafter as “Class Members” or “Safety Attendants” for ease of reading.

⁴ This amount divides the *net* recovery by the total number of discrete Class Members.

1 Workweek, and three times that (\$122.91) for each California Workweek.⁵ Thus, the Settlement
 2 provides well over \$1,000 to a Class Member with just nine Workweeks in California.

3 This excellent result did not come without extensive effort, skill and substantial risk. From the
 4 start, Defendant put up a staunch defense. Class Counsel successfully opposed an early motion to
 5 dismiss, then negotiated a stipulation to conditional certification. When the third-party notice
 6 administrator failed to properly disseminate notice, Class Counsel swiftly took action to protect
 7 Collective members, including motion practice for an additional round of notice and longer opt-in
 8 period. When the Court ruled that many would-be opt-in Plaintiffs would not be able to participate in
 9 this case, Class Counsel filed a separate proceeding in order to ensure their rights would be protected
 10 and pursued. Through Class Counsel's tireless work, Class Counsel determined not only that
 11 CertifiedSafety's oil refinery clients were properly viewed as jointly culpable for the wage and hour
 12 violations at issue, but that the state law claims for virtually all Collective members were implicated.
 13 Class Counsel sought all appropriate amendments, and to the extent the Court did not permit these
 14 amendments, Class Counsel persisted, filing separate lawsuits across the country to ensure the rights
 15 of all Class and Collective members were fully pursued and protected. Following two mediations,
 16 Class Counsel obtained a substantial six-million-dollar settlement for Class and Collective members.

17 Class Counsel's request for a one-third fee award is within the typical range of attorneys' fees
 18 awarded in this Circuit. The skill, effort, and excellent result merit an upward adjustment from the
 19 25% "benchmark" under the factors established for determining fee awards. In addition to
 20 representing a *negative* multiplier of Class Counsel's aggregate lodestar, the requested fee is
 21 reasonable compensation for the exceptional Settlement that Class Counsel achieved with its work.
 22 The three years of intensive litigation have included: four amended complaints, the filing of
 23 companion lawsuits, a crucial Rule 30(b)(6) deposition, three depositions of Named Plaintiffs,
 24 hundreds of hours of interviews with Opt In Plaintiffs, two separate mediations and arms'-length
 25 negotiations, and a complex and intricate Settlement Agreement which the Court preliminarily
 26

27
 28 ⁵ The majority of the Workweeks covered by the Settlement are California Workweeks. The
 weighting factors recognize that the stronger wage and hour laws of certain states would result in
 enhanced recoveries compared to states with no wage and hour protections beyond the FLSA.

1 approved. The requested fee is reasonable compensation for this work.

2 Finally, Class Counsel seeks the Court's approval of service awards of a total of \$75,000 for
3 the seven Class Representatives⁶ – \$15,000 for Plaintiffs Jones, Knight, and Crummie; \$10,000 for
4 Plaintiffs Ross and East; and \$5,000 for Plaintiffs Azevedo and Turner, as contemplated by the
5 Settlement Agreement. For the reasons set forth below, the Court should award the proposed service
6 award for each of these individuals as fair and reasonable compensation for their efforts in bringing
7 and prosecuting this matter for the benefit of the Classes and Collective.

8 **II. OVERVIEW OF CLASS COUNSEL'S WORK ON THE ACTIONS**

9 In the three years since the first Complaint was filed in the Actions, Class Counsel has devoted
10 over 3,466 hours to the prosecution of the Actions, with a combined lodestar amount of \$2,328,546.
11 See Cottrell Decl. ¶ 8; Aiwarzian Decl. ¶ 10. Class Counsel vigorously litigated the Actions, engaging
12 in intensive outreach and motion practice to effectively prosecute the Class and Collective claims,
13 while also demonstrating willingness to participate in good-faith attempts to settle the Actions.⁷ Class
14 Counsel's efforts culminated in the Settlement, which provides significant monetary benefits for the
15 Safety Attendants.

16 The extensive procedural history of these Actions was well documented in Plaintiffs'
17 November 22, 2019 Motion for Preliminary Approval of Class and Collective Action Settlement
18 ("Preliminary Approval Motion"). See ECF 206. The Preliminary Approval Motion and attached
19 Declarations by Class Counsel detail the events that transpired in this Action from the time Plaintiff
20 Harold Jones filed the initial Collective and Class Action Complaint on April 21, 2017 through the
21 filing of that motion on November 22, 2019. Since that time, Class Counsel submitted supplemental
22 briefing and evidence in support of the Settlement and reached an Amendment to address issues
23 identified by the Court. See ECF 211, 215. The Court preliminarily approved the Settlement on
24 January 22, 2020 (ECF 216), and the Parties have proceeded with notice administration. Pursuant to
25 the U.S. District Court for the Northern District of California Procedural Guidance for Class Action

26 ⁶ The "Named Plaintiffs" are Harold Jones, Tierre Crummie, Genea Knight, Sandra Turner, George
27 Azevedo, Jr., Marcellous Ross, and Michael East. They are sometimes referred to herein as "Class
28 Representatives." See Settlement Agreement ¶ 2.13. "Named Plaintiffs" and "Class Representatives"
are used interchangeably herein.

⁷ A summary of Class Counsel's work to date is provided in the accompanying Cottrell Decl. at ¶¶
10-26.

Settlements, the full procedural history and background facts are set forth in Plaintiffs' accompanying Motion for Final Approval of Class and Collective Action Settlement.

III. ARGUMENT

A. Legal Standard for Fee Awards in Common Fund Cases in the Ninth Circuit

In a class action settlement, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). Courts have the power to award reasonable attorneys' fees and costs where, as here, a litigant proceeding in a representative capacity secures a "substantial benefit" for a class of persons. *See e.g., Hendricks v. Starkist Co.*, No. 13-cv-00729-HSG, 2016 WL 5462423, *10 (N.D. Cal. Sept. 29, 2016). *Staton v. Boeing Co.*, 327 F. 3d 938, 967 (9th Cir. 2003). The two methods for determining reasonable fees in the class action settlement context are the "percentage of recovery" method and the "lodestar method." *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1170 (C.D. Cal. 2010); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

The California Supreme Court has endorsed the use of the percentage method of awarding attorneys' fee where a class action suit results in a common fund for the class, citing the method's relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (Cal. 2016) (approving attorneys' fee award in wage and hour case in the amount of one-third of gross settlement). Similarly, "[u]nder Washington law, the percentage of-recovery approach is used in calculating fees in common fund cases." *Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1047 (9th Cir. 2002) (citation omitted). The majority of Ninth Circuit and other federal courts are in accord. *See Six Mexican Workers v. Arizona Citrus Growers*, 904 F. 2d 1301, 1311 (9th Cir. 1990) (common fund fee is generally "calculated as a percentage of the recovery").⁸

⁸ *See also In re Capacitors Antitrust Litig.*, No. 3:17-md-02801-JD, 2018 WL 4790575, at *2 (N.D. Cal. Sept. 21, 2018) ("Indeed, the percentage of the fund method is *preferred* when counsel's efforts have created a common fund for the benefit of the class.") (collecting cases); *Fleury v. Richemont N. Am., Inc.*, No. C-05-4525 EMC, 2009 WL 1010514, *3 (N.D. Cal. Apr. 14, 2009) ("Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for Plaintiff who could not afford to pay on an hourly basis regardless whether they win or lose... [i]f this 'bonus'

Accordingly, the Court should employ the percentage of recovery method in this case and award Class Counsel their requested fee of one-third of the Gross Settlement Fund.

B. Class Counsel's Fee Request is Fair and Reasonable and Merits Upward Adjustment from the 25% Benchmark Under the *Vizcaino* Factors

"The typical range of acceptable attorneys' fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value, with 25% considered the benchmark." *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 491-492 (E.D. Cal. 2010) (granting 33.3% fee award and collecting cases) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000)); *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1029 (9th Cir. 1998); *Staton*, 327 at 952). However, the exact percentage varies depending on the facts of the case, and in "most common fund cases, the award exceeds that benchmark." *Vasquez*, 266 F.R.D. at 491-492 (citations omitted); *In re Pacific Enterprises Sec. Litig.*, 47 F. 3d 373, 379 (9th Cir. 1995) (affirming award of 33% of \$12 million common fund).

This Court and other courts have customarily approved payments of attorneys' fees amounting to one-third of the common fund, including in comparable wage and hour class actions, and this Court has described a one-third fee as "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits." *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 U.S. Dist. LEXIS 92067, at *18 (N.D. Cal. Aug. 9, 2010) (Chen, J.); *see also Zamora v. Lyft, Inc.*, No. 3:16-cv-02558-VC, 2018 WL 4657308, at * 3 (N.D. Cal. Sept. 26, 2018) (one-third award is "consistent with the Ninth Circuit authority and the practice in this District."). In *Zamora*, Judge Chhabria noted that that "[t]he Ninth Circuit benchmark for megafund class action settlements of \$50-200 million of 25% is to be adjusted upward or downward based on the size of the fund made available and in light of the lodestar cross-check." 2018 WL 4657308, at * 3. The Court further noted that the settlement fund of \$1.95 million was "well below the megafund range" and that "[i]n this District, fee awards of approximately 33 1/3% are typical for settlements up to \$10 million." *Id.* at *3 (citing *Galeener v. Source Refrigeration & HVAC, Inc.*, No. 3:13-cv-04960-VC, 2015 WL 12977077,

methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing") (internal citation omitted); *Swedish Hosp. Corp. v. Shalala*, 1 F. 3d 1261, 1271 (D.C. Cir. 1993) ("a percentage of the fund method is the appropriate mechanism for determining the attorney fees award in common fund cases.").

at *4 (N.D. Cal. Aug. 21, 2015) (33 1/3% fee of \$10 million fund) and *Bennett v. SimplexGrinnell LP*, No. 11 Civ. 01854, 2015 WL 12932332, at *6 (N.D. Cal. Sept. 3, 2015) (38.8% of \$4.9 million fund)).⁹

The Ninth Circuit instructs that “[t]he 25% benchmark, though a starting point for analysis, may be inappropriate in some cases.” *Vizcaino*, 290 F. 3d at 1047; *Six Mexican Workers*, 904 F. 2d at 1311 (the “benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors.”). The choice of “the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case.” *Vizcaino*, 290 F. 3d at 1048. The Ninth Circuit has identified a number of factors that may be relevant in determining whether the requested fee is “reasonable” under the “circumstances of the case:” (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the Plaintiff; and (5) awards made in similar cases. *Vizcaino*, 290 F. 3d at 1048-1050 (the “*Vizcaino* factors”). See *Hightower v. JPMorgan Chase Bank, N.A.*, No. CV 11-1802 PSG (PLAx), 2015 WL 9664959, *11 (C.D. Cal. 2015) (citing *Vizcaino*, 290 F.3d at 1048-50). Other courts have additionally considered (6) reactions from the class; and, in its discretion, (7) a lodestar cross-check. See *Barnes v. The Equinox Group, Inc.*, No. C 10-3586 LB, 2013 WL 3988804, *4 (N.D. Cal. 2013).

Here, application of the *Vizcaino* factors supports the requested fee award.

1. The Results Achieved by this Settlement Support the Request

“The overall result and benefit to the class from the litigation is the most crucial factor in granting a fee award.” *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). Here, the Settlement preliminarily approved by the Court resolves the claims of the Class

⁹ In *Galeener*, this Court cited the observation of Chief Judge Wilken that a fee award of 30% “is only modestly more than the Ninth Circuit’s 25% ‘benchmark’ percentage” and “[i]n light of the many cases in this circuit that have granted fee awards of 30% or more” it is “well within the usual range of percentages awarded.” *Galeener*, 2015 WL 12977077, at *1 (citing *Vedachalam v. Tata Consultancy Servs. Ltd.*, No. 06 Civ. 963, 2013 WL 3941319, at *2 (N.D. Cal. July 18, 2013) (collecting cases)); see also *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at *29 (N.D. Cal. Apr. 1, 2011) (approving attorneys’ fee award of just under 42% of common fund); *Big Lots Overtime Cases*, JCC Proceeding No. 4283 (San Bernardino Super. Ct. Feb. 4, 2004) (approving 33% fee award).

Members for a total non-reversionary settlement of \$6,000,000. Cottrell Decl. ¶ 28. The Settlement provides excellent recoveries—\$1,514.35 per Class Member, on average, an exceptional amount considering that the typical Class Member worked a relatively short tenure. Sixty-eight Class Members will receive in excess of \$10,000.00, six Class Members will receive over \$20,000, and the largest recovery is an impressive \$26,205.20. *Id.* Settlement Class Members will receive their awards without the need to file claims forms. *Id.* The negotiated non-reversionary Gross Settlement Amount of \$6,000,000 represents more than 53% of the approximately \$11.3 million that Plaintiffs calculated for the core unpaid wages claims. *Id.*

The highly favorable terms achieved by Class Counsel’s skill and perseverance favor upward departure from the benchmark and support Class Counsel’s request for a one-third award. *See Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1022 (E.D. Cal. 2019) (settlement which recovered approximately 48% of estimated damages and provided that all funds would go to claimants with no reversion was “exceptional result” weighing in favor of higher-than-benchmark award of 33.3%, or \$13.3 million, especially since award was less than lodestar).

Courts have also recognized the benefits to class members of receiving payments sooner rather than later, where litigation could extend for years on end, thus significantly delaying any payments to class members. *See California v. eBay, Inc.*, No. 5:12-cv-05874-EJD, 2015 WL 5168666, *4 (N.D. Cal. Sept. 3, 2015) (“Since a negotiated resolution provides for a certain recovery in the face of uncertainty in litigation, this factor weighs in favor of settlement”); *Oppenlander v. Standard Oil Co.*, 64 F.R.D. 597, 624 (D. Colo. 1974) (“It has been held proper to take the bird in hand instead of a prospective flock in the bush.”). Thus, this *Vizcaino* factor supports the reasonableness of the 33.33% attorneys’ fee award.

2. The Risks of Litigating this Case Were Substantial

“Risk is a relevant circumstance.” *Carlin* 380 F. Supp. 3d at , 1020 (citing *Vizcaino*, 290 F. 3d at 1048 and awarding 33 1/3% fee). There are many risks inherent in litigating a class action: class certification, decertification, a decision on the merits, potential appeals, and inability to collect a judgment are all issues that can result in no recovery whatsoever to class members or class counsel.

Courts routinely find that this factor supports a fee request above the benchmark.¹⁰

In this litigation, the Parties engaged in a series of actions against numerous Defendants, voluminous and costly motion practice, and two separate mediations facilitated by experienced mediators, which enabled Class Counsel (as well as Defendant) to accurately assess the legal and factual issues – and related risks – that would arise if the case proceeded to trial. Recovery of the damages and penalties at trial would require complete success and certification of all of Plaintiffs’ claims, an uncertain feat in light of developments in wage and hour and class and collective action law as well as the legal and factual grounds that Defendants have asserted to defend this action. Cottrell Decl. ¶ 30. In order to fully protect the rights of all Class and Collective members, Class Counsel was required to file lawsuits all over the country, against multi-billion dollar energy corporations with limitless resources to defend these proceedings.

While Plaintiffs are confident in their ability to certify and successfully litigate the alleged claims on the merits, Plaintiffs assert no less than six putative Rule 23 Classes, along with a FLSA Collective. Off-the-clock claims are difficult to certify for class treatment, given that the nature, cause, and amount of the off-the-clock work may vary based on the individualized circumstances of the worker. *See, e.g., In re AutoZone, Inc., Wage & Hour Employment Practices Litig.*, 289 F.R.D. 526, 539 (N.D. Cal. 2012), *aff’d*, No. 17-17533, 2019 WL 4898684 (9th Cir. Oct. 4, 2019); *Kilbourne v. Coca-Cola Co.*, No. 14CV984-MMA BGS, 2015 WL 5117080, at *14 (S.D. Cal. July 29, 2015); *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2011 WL 8199987, at *30 (C.D. Cal. Nov. 23, 2011).

Moreover, Plaintiffs considered the risk that the Court would, in the end, decline to find the refinery Defendants liable as joint employers. Cottrell Decl. ¶ 32. Though CertifiedSafety would still

¹⁰ *Hightower v. JPMorgan Chase Bank, N.A.*, No. CV 11-1802 PSG (PLAx), 2015 WL 9664959, *11 (C.D. Cal. 2015) (approving 30% fee request in part because “the risk of no recovery for Plaintiff, as well as for Class Counsel, if they continued to litigate, were very real”); *In re Nuvelo, Inc. Sec. Litig.*, No. C 07-04056 CRB, 2011 WL 2650592, *2 (N.D. Cal. July 6, 2011) (approving 30% fee request and noting that “[i]t is an established practice to reward attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all”); *Kanawi v. Bechtel Corp.*, No. C 06-05566 CRB, 2011 WL 782244, *2 (N.D. Cal. Mar. 1, 2011) (approving 30% fee request and reasoning “[s]uch a practice encourages the legal profession to assume such a risk and promotes competent representation for Plaintiffs who could not otherwise hire an attorney”).

be liable in the event of a favorable outcome for Plaintiffs, a finding that the refinery Defendants are joint employers would ensure that the Class Members would be able to obtain full recovery, particularly in the event of a large award. *Id.* Though Plaintiffs have filed pleadings alleging claims of liability against refinery Defendants on a joint employer basis, the issue would be heavily contested at summary judgment and/or trial(s). *Id.* If refinery Defendants are found not to be a joint employer, the value of the case would be lessened.

Plaintiffs, Class Members, and their counsel faced all of these risks, and others, many of which could have resulted in no recovery. Class Counsel's perseverance in pursuing the litigation for three years, and their commitment to developing the employees' claims and maximizing the Class and Collective recovery in the face of these risks, warrant an increase in the benchmark to one-third of the total recovery.

3. Counsel Have Demonstrated Significant Skill Throughout the Litigation of this Matter and Have Extensive Background in this Field of Law

Prosecuting class actions requires an "extraordinary commitment of time, resources, and energy from Class Counsel," and many times, settlements "simply [are not] possible but for the commitment and skill of Class Counsel." *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW, 2010 WL 1687829, at *2 (N.D. Cal. 2010). As described above, Class Counsel took on this case despite its complexity and risks, diligently prosecuted the case, and negotiated a substantial recovery. This factor also supports Class Counsel's fee request.

Class Members have been represented by highly experienced counsel who focus on wage and hour class actions. Cottrell Decl. ¶¶ 5-7. SWCK has been recognized as a leading Plaintiffs' firm nationally for their work on behalf of employees in wage and hour litigation. Cottrell Decl. ¶ 5. The Settlement involves complex provisions of the FLSA, the California Labor Code, and the wage and hour laws of numerous other states where Safety Attendants worked, and is a reflection of Class Counsel's experience and skill.¹¹ Accordingly, Class Counsel's expertise and skill in this area of law, coupled with their willingness to take on risky cases, justify the fee request.

¹¹ See *Schroeder v. Envoy Air, Inc.*, No. CV 16-4911-MWF (KSx), 2019 WL 2000578, at *7 (C.D. Cal. May 6, 2019) (awarding 33% fee, finding that counsel "exercised considerable skill" in litigating

4. Counsel Incurred a Financial Burden in Litigating this Case on a Contingency Fee Basis

The contingent nature of the fee considers “the burdens class counsel experienced while litigating the case (*e.g.*, cost, duration, foregoing other work)” and weigh in favor of granting the requested fee award. *Carlin*, 380 F. Supp. 3d at 1021. Here, Class Counsel undertook all the risk of this litigation on a completely contingent fee basis, expending time and incurring expenses with the understanding that there was no guarantee of compensation or reimbursement. The contingent nature of litigating a class action and the financial burden assumed typically justifies an increase from the 25% benchmark, as counsel litigates with no payment and no guarantee that the time or money expended will result in any recovery.¹²

Substantial fee awards encourage attorneys to take on risky cases on behalf of clients who cannot pay hourly rates and would therefore not otherwise have realistic access to courts. That access is particularly important for the effective enforcement of public protection statutes, such as the wage laws at issue here. *See Reiter v. Sonotone Corp.*, 442 U.S. 330, 344 (1979) (“private suits provide a significant supplement to the limited resources available to [government enforcement agencies] for enforcing [public protection] laws and deterring violations.”). By incentivizing plaintiff’s attorneys to take on risky, high-stakes, and important litigation, and devote themselves to it aggressively and fully, fee awards serve an important purpose and extend the access of top legal talent to constituencies such as low-wage workers who would otherwise never be able to confront employers, who are themselves represented by top-rated attorneys.

In this case, although the risks were front and center, Plaintiffs and Class Counsel committed themselves to developing and pressing Plaintiffs’ legal claims to enforce the employees’ rights and maximize the class and collective recovery. During the litigation, Class Counsel had to turn away other less risky cases to remain sufficiently resourced for this one. *See Cottrell Decl.* ¶ 34.

various motions, and engaging in substantial discovery, and “did so against experienced, highly skilled opposing counsel and on an entirely contingent basis.”).

¹² *See Hightower v. JPMorgan Chase Bank, N.A.*, No. CV 11-1802 PSG (PLAx), 2015 WL 9664959, at *10 (C.D. Cal. 2015) (“any law firm undertaking representation of a large number of affected employees in wage and hour actions inevitably must be prepared to make a tremendous investment of time, energy, and resources with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.”) (internal quotations omitted) (*citing Vizcaino*, 290 F.3d at 1051).

Accordingly, a one-third recovery for fees is appropriate.

5. The Requested Fee Award is Equivalent to Awards in Similar Cases

As discussed above, many, if not most, fee awards in class settlements of common fund cases in this Circuit *exceed* the 25% benchmark. The same holds true for fee awards in common fund settlements of wage and hour class and collective actions. *See, e.g., Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, *4 (E.D. Cal. 2007) (in wage and hour action, stating “fee awards in class actions average around one-third of the recovery” and awarding fees in that amount) (citing 4 Newberg and Conte, *Newberg on Class Actions* § 14.6 (4th ed. 2007)).¹³ These similar cases further support Plaintiffs’ request. In *Soto, et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-VC, ECF 304, 305 (N.D. Cal. Oct. 23, 2019), Judge Chhabria recently awarded SWCK a one-third fee award for a \$7.5 million settlement in a hybrid FLSA/Rule 23 wage and hour class and collective action. Judge Chhabria noted that the one-third award was “justified under the common fund doctrine, the range of awards ordered in this District and Circuit, the excellent results obtained, the substantial risk borne by Class Counsel in litigating this matter, the high degree of skill and quality of work performed, the financial burden imposed by the contingency basis of Class Counsel’ representation of Plaintiffs and the Classes and Collective, and the additional work required of Class Counsel to bring this Settlement to conclusion.” *Id.* (ECF 305)

6. The Reaction of the Class (or Lack Thereof) Supports the Fee Request

“It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528-29 (C.D. Cal. 2004). Here, Notices of Settlement were sent via regular mail, electronic mail, and text message to 2,481 Class Members on February 19, 2020. Cottrell Decl. ¶ 35. The notice

¹³ *See also Zamora v. Lyft, Inc.*, No. 3:16-cv-02558-VC, 2018 WL 4657308, at * 3 (N.D. Cal. Sept. 26, 2018) (noting that the settlement fund of \$1.95 million was “well below the megafund range” and that “[i]n this District, fee awards of approximately 33 1/3% are typical for settlements up to \$10 million.”) (citing *Galeener v. Source Refrigeration & HVAC, Inc.*, No. 3:13-cv-04960-VC, 2015 WL 12977077, at *4 (N.D. Cal. Aug. 21, 2015) (33 1/3% fee; \$10 million fund) and *Bennett v. SimplexGrinnell LP*, No. 11 Civ. 01854, 2015 WL 12932332, at *6 (N.D. Cal. Sept. 3, 2015) (38.8%; \$4.9 million fund.)).

period ended on April 20, 2020. Not one Class Member has objected to the settlement, and not one Class Member has requested exclusion. *Id.* The lack of objections by Class Members to the Settlement or the fee provision demonstrates the Class's approval of the result in this case and further bolsters counsel's reasonable request for fees.¹⁴

7. A Lodestar Cross-Check, if Applied, Supports Plaintiffs' Fee Request

Both federal and California courts have the discretion to employ (or decline to employ) a "lodestar cross-check" on a request for a percentage of the fund fee award. However, as both the Ninth Circuit in *Vizcaino*, and the California Supreme Court in *Laffitte*, have made clear that this cross-check is not required.¹⁵ While Plaintiffs submit that a cross-check is not necessary in this case, even if the Court were to employ one, the cross-check more than supports the requested fees here. Class Counsel's accompanying declarations provide a summary of the lodestar, time and hourly rates, as well as descriptions of the nature of work performed. *See* Cottrell Decl. ¶¶ 36-37, 39-41; Aiwasian Decl. ¶¶ 10-11. Class Counsel has spent a collective 3,466 hours litigating this case, for a current lodestar of \$2,328,546, not including all the work remaining to bring the Settlement to a close. *See* Cottrell Decl. ¶ 36. This amount *exceeds* the requested fee, resulting in a 0.859 multiplier, further supporting this request. *See Zamora*, 2018 WL 4657308, at *3 (finding that "lodestar multiplier of 0.86x strongly supports the 33 1/3% fee award").

C. Class Counsel's Costs Should be Approved

In addition to being entitled to reasonable attorneys' fees, the FLSA and state wage and hour laws provide for the reimbursement of costs. *See, e.g.*, 29 U.S.C. § 216(b); Cal. Lab. Code § 1194; RCW 49.12.150; RCW 49.52.070; ORC 4111.10; *see also Cunha*, 2015 WL 12697627, *5 ("[A] private plaintiff, or [its] attorney, whose efforts create, discover, increase or preserve a fund to which

¹⁴ *See Cunha v. Hansen Nat. Corp.*, No. 08-1249-GW(JCx), 2015 WL 12697627, at *7 (C.D. Cal. Jan. 29, 2015) ("[N]ot a single class member has objected to the settlement and/or fee/expense application. This dearth of opposition perhaps speaks most loudly in favor of approving the fee and expense requests.").

¹⁵ *Vizcaino*, 290 F. 3d at 1050 & n. 5 (noting that while "primary basis of the fee award remains the percentage method," lodestar "may" be useful, but that it is "merely a cross check" and "it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case"); *Laffitte*, 1 Cal. 5th at 505. *See Lopez v. Youngblood*, No. cv-F-07-0474 DLB, 2011 WL 10483569, at *14 (E.D. Cal. Sept. 2, 2011) ("A lodestar cross check is not required in this circuit, and in a case such as this, is not a useful reference point").

1 others also have a claim is entitled to recover from the fund the costs of [its] litigation . . .”).

2 Here, Class Counsel’s current costs total \$60,397.73. Cottrell Decl. ¶ 56. Class Counsel’s
3 costs include reasonable out-of-pocket expenditures. Under the “common fund doctrine,” “attorneys
4 may recover their reasonable expenses that would typically be billed to paying clients in non
5 contingency matters.” *Cunha*, 2015 WL 12697627, *5.

6 The expenses incurred in this litigation to date are described in the accompanying declarations
7 of the law firms involved in this litigation. *See* Cottrell Decl. ¶¶ 53-55; Aiwazian Decl. ¶ 18. These
8 expenses are of the type typically billed by attorneys to paying clients in the marketplace and include
9 such costs as mediation fees, court costs, notice costs, copying and printing costs, travel expenses,
10 and computerized research. *See id.* These costs are routinely found to be reasonable and awarded
11 reimbursement by courts in the Ninth Circuit. *See, e.g., In re Immune Response Securities Litig.*, 497
12 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) (awarding reimbursement for expenses for meals, hotels,
13 and transportation; photocopies; telephone; filing fees; messenger and overnight delivery; online
14 legal research; and mediation fees, which it found to be “reasonable and necessary”).

15 All of these expenses were reasonable and necessary for the successful prosecution of the
16 Actions, and pursuant to the terms of the Settlement, Defendant does not object to the request for
17 costs. Further, no Class Member has objected to the request for costs. Cottrell Decl. ¶ 55. Class
18 Counsel therefore requests reimbursement of costs in the amount of \$60,397.73.

19 **D. The Court Should Approve Service Awards to Named Plaintiffs**

20 “[N]amed Plaintiffsare eligible for reasonable incentive payments.” *See Staton v. Boeing*
21 *Co.*, 327 F. 3d 938, 977 (9th Cir. 2003). The purpose of such awards is “to compensate class
22 representatives for work done on behalf of the class [and] make up for financial or reputational risk
23 undertaken in bringing the action...” *Rodriguez v. West Pul’g Corp.*, 563 F. 3d 948, 958-59 (9th Cir.
24 2009). Here, subject to the Court’s approval, the enhancement payments of up to \$15,000 for
25 Plaintiffs Jones, Knight, and Crummie; \$10,000 for Plaintiffs Ross and East; and \$5,000 for Plaintiffs
26 Azevedo and Turner are intended to compensate these Plaintiffs for the critical roles they played in
27 this litigation, and the time, effort, and risks undertaken in helping secure the result obtained on behalf
28

1 of the Class Members.¹⁶ Cottrell Decl. ¶ 38. Defendant does not oppose the requested payments to
 2 the Plaintiffs as reasonable service awards. *See* Settlement Agreement ¶ 4.3.

3 The amounts of these service awards are fair when compared to the payments approved in
 4 similar cases by courts in this District.¹⁷ In evaluating the appropriateness of service awards, courts
 5 may consider “relevant factors includ[ing] the actions the plaintiff has taken to protect the interests
 6 of the class, the degree to which the class has benefitted from those actions....the amount of time and
 7 effort the plaintiff expended in pursuing the litigation... and reasonabl[e] fear[s of] workplace
 8 retaliation.” *Staton*, 327 F. 3d at 977 (citation omitted).

9 Here, each Class Representative has expended substantial time assisting in the prosecution of
 10 the claims, including putting their names on the caption of complaints as Named Plaintiffs. Each spent
 11 considerable time providing information to counsel, assisting in the drafting of pleadings and other
 12 documents, and regularly discussing the facts and proceedings with Class Counsel.¹⁸ Plaintiffs Jones,
 13 Knight, and Crummie devoted the most time to the case, and therefore are deserving of the largest
 14 service awards. Each has been in the litigation since the beginning, remaining actively involved
 15 through two mediations and numerous amendments to the pleadings.¹⁹ Plaintiffs Jones, Knight, and
 16 Crummie also sat for depositions, which involved significant expenditures of their time for travel,
 17 preparation, the deposition itself, and review of the transcript.²⁰ Plaintiffs Ross and East became
 18 Named Plaintiffs after these proceedings were underway, while Plaintiffs Turner and Azevedo
 19 became Named Plaintiffs more recently. The differing amounts of the service awards recognize the
 20 differing levels of contributions of the seven Named Plaintiffs.

21
 22 ¹⁶ Moreover, Plaintiffs have agreed to a general release, unlike other Class Members. *See* Settlement
 23 Agreement ¶ 4.21.

24 ¹⁷ *See, e.g., Soto, et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-VC, ECF 304,
 25 305 (N.D. Cal. Oct. 23, 2019) (approving \$15,000 and \$10,000 service awards in hybrid FLSA/Rule
 26 23 wage and hour action); *Guilbaud v Sprint/United Management Co., Inc.*, No. 3:13-cv-04357-VC,
 27 ECF No. 181 (N.D. Cal. Apr. 15, 2016) (approving \$10,000 service payments for each class
 28 representative in FLSA and California state law representative wage and hour action); *Villalpando v.*
Exel Direct, Inc., No. 3:12-cv-04137-JCS, 2016 WL 7785852, at *2 (N.D. Cal. Dec. 9, 2016)
 (approving \$15,000 service awards to each of three class representatives).

¹⁸ Jones Decl. ¶¶ 12-13, 18-20; Knight Decl. ¶¶ 10, 14-15; Crummie Decl. ¶¶ 2-3; Ross Decl. ¶¶ 9,
 13-14; East Decl. ¶¶ 9, 13-14; Turner Decl. ¶¶ 10, 13-15; Azevedo Decl. ¶¶ 10, 13-15.

¹⁹ Mr. Jones has also served as the Named Plaintiff in four lawsuits against CertifiedSafety.

²⁰ Jones Decl. ¶¶ 14-15; Knight Decl. ¶¶ 16-17; Crummie Decl. ¶ 5.

1 The requested Service Awards are reasonable in light of the significant reputational risk each
 2 Class Representative took by publicly affiliating themselves with litigation against their employer.²¹
 3 Notwithstanding these risks, each Class Representative has remained in the case and seen it through
 4 to its excellent outcome, while agreeing to a general release of all claims. This substantial sacrifice
 5 supports the service awards sought here. *See Schaffer v. Litton Loan Servicing, LP*, No. CV 05-07673
 6 MMM (JCx), 2012 WL 10274679, at *18 (C.D. Cal. Nov. 13, 2012); *Millan v. Cascade Water*
 7 *Services, Inc.*, No. 1:12-cv-01821-AWI-EPG, 2016 WL 3077710, at *12 (E.D. Cal. June 2, 2016)
 8 (reasoning that service awards “are particularly appropriate in wage-and-hour actions where plaintiffs
 9 undertake a significant ‘reputational risk’ by bringing suit against their present or former
 10 employers.”).

11 Further, perseverance in pursuing litigation on behalf of a class over the course of a lengthy
 12 period of time supports the approval of reasonable service awards. “When litigation has been
 13 protracted, an incentive award is especially appropriate.” *In re Toys R Us*, 295 F.R.D. at 471; *Trujillo*
 14 *v. City of Ontario*, No. EDCV 04-1015-VAP (SGLx), 2009 WL 2632723, at *1, *5 (C.D. Cal. Aug.
 15 24, 2009). Here, the litigation has been protracted. Each of these Class Representatives was prepared
 16 to persevere through further litigation and trial if the Settlement had not been reached. The “duration”
 17 factor weighs in favor of the requested service awards.

18 In addition, in evaluating proposed service awards, courts compare the overall settlement
 19 benefits and the range of recovery available to the class members to the representative plaintiffs’
 20 proposed service awards.²² Here, the \$75,000 aggregate amount of the proposed service awards is
 21 quite modest in comparison to the overall benefits of the settlement and recovery to the class,
 22 representing 1.25% of the total funds that the Defendant will expend to settle this lawsuit. The modest
 23 amount of these requested service awards in relation to the excellent settlement amount weighs in
 24 favor of their appropriateness. The Notices advised of the service awards, and no Class Members
 25 objected. Therefore, the proposed service awards should be finally approved.

26 ²¹ Jones Decl. ¶¶ 10, 28-29; Knight Decl. ¶¶ 12, 27; Ross Decl. ¶¶ 11, 23; East Decl. ¶¶ 11, 22;
 27 Turner Decl. ¶¶ 12, 23; Azevedo Decl. ¶¶ 12, 23.

28 ²² *See, e.g., Staton*, 327 F.3d at 976-77; *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 669 (E.D. Cal. 2008).
 The purpose of the inquiry is to ensure that the service awards have not compromised the ability of
 the representative plaintiffs to act in the best interest of the class. *Radcliffe v. Experian Info. Solutions,*
Inc., 715 F.3d 1157, 1163 (9th Cir. 2013).

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion.

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4
5 Date: April 23, 2020

Respectfully submitted,

6
7 /s/ Carolyn Hunt Cottrell

Carolyn Hunt Cottrell

8 David C. Leimbach

9 Michelle S. Lim

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10 SCHNEIDER WALLACE

COTTRELL KONECKY LLP

11 Attorneys for Plaintiffs and the Settlement Classes and
12 Collective
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court's CM/ECF system on April 23, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

Dated: April 23, 2020

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell